City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: September 2, 2009

Meeting Date: September 14, 2009

Subject: 16 Hidden Valley Road – Request for Retaining Wall Encroachment into the City Right-of-Way

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Introduction

Mark D. Kittinger owns the property at 16 Hidden Valley Road. Mr. Kittinger is requesting permission to construct a new 4 foot retaining wall along his property on Diablo Circle to replace an existing 4 foot high retaining wall that is failing (See Figure 1 for the site plan). The new retaining wall will be constructed of pressure treated Douglas-fir as specified by the dimensioned details shown in Figures 2 and 3. This construction will require an encroachment agreement because the new wall will be placed in the public right-of-way. Staff recommends approval of the agreement.

Discussion

The property owner wishes to replace an existing retaining wall that runs along his property on Diablo Circle. The existing wall shown in Figures 4 through 9 is failing and needs to be replaced. The attached plan (Figure 1) shows the location of the improvements relative to the right-of-way line and the existing edge of the traveled way. The existing retaining wall varies approximately 2 to 4 feet from the edge of the traveled way on Diablo Circle and encroaches approximately 8 to 11 feet into the public right-of-way. The owner has agreed to set back the proposed retaining wall to 5 feet off the traveled way where conditions allow. From point A to point B on the site plan the proposed wall will be set back approximately one foot further from the traveled way. The utility pole, standing 2 feet from the existing retaining wall, limits how far back the new wall can be placed. Point B on the site plan marks the location of Mr. Kittinger's existing concrete stairway that connects his backyard to Diablo Circle. This stairway resides approximately 2 feet from the edge of traveled way and will remain in its current location. From point B to point C the new retaining wall will be placed a minimum of 5 feet off the edge of traveled way except where it will taper down from the 2-foot setback

at the stairway. At point C the existing retaining wall is approximately 5.5 feet from the edge of the traveled way and matches the adjacent property's fence line.

The City does not have plans to widen Diablo Circle or to install improvements along the edge of the road in the near future. The property owner understands that he is responsible for removing the retaining wall if deemed necessary by the City. Construction of the new retaining wall in the proposed location will create a wider shoulder on Diablo Circle, will improve the sight distance for drivers travelling southbound on Diablo Circle, will prevent a more costly and extensive failure of the existing wall, and will improve the aesthetics of the neighborhood. Based on these considerations, staff recommends approval of this agreement.

Fiscal Impact

None

Recommendation

It is recommended that the City Council approve the encroachment into the City right-of-way along 16 Hidden Valley Road and authorize the City Manager to execute an encroachment agreement with the applicant.

Figure 1: 16 Hidden Valley Road Site Plan

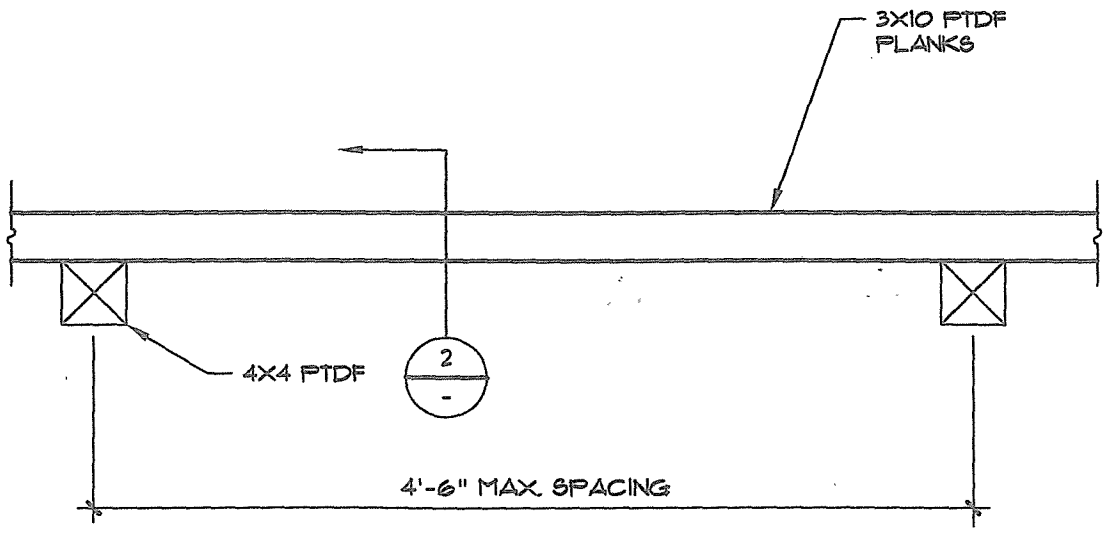

Figure 2: Partial Plan

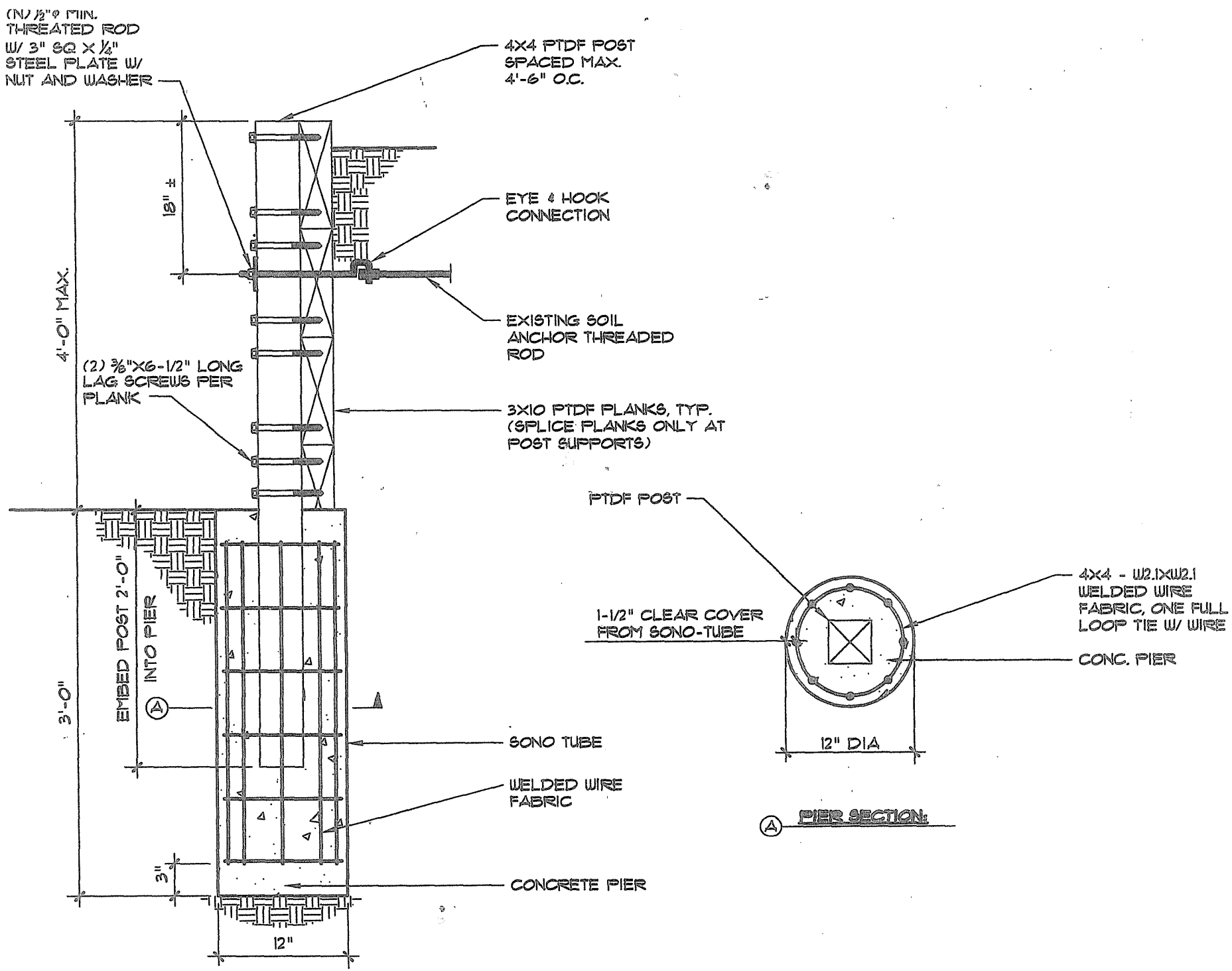
(N) ½"ø MIN. THREATED ROD W/ 3" SQ X ¼" STEEL PLATE W/ NUT AND WASHER
4X4 PTDF POST SPACED MAX. 4'-6" O.C.
18" ±
EYE & HOOK CONNECTION
4'-0" MAX.
EXISTING SOIL ANCHOR THREADED ROD
(2) ⅜"X6-1/2" LONG LAG SCREWS PER PLANK
3X10 PTDF PLANKS, TYP. (SPLICE PLANKS ONLY AT POST SUPPORTS)
PTDF POST
4X4 - W2.1XW2.1 WELDED WIRE FABRIC, ONE FULL LOOP TIE W/ WIRE
1-1/2" CLEAR COVER FROM SONO-TUBE
CONC. PIER
12" DIA
EMBED POST 2'-0" INTO PIER
3'-0"
SONO TUBE
WELDED WIRE FABRIC
3"
CONCRETE PIER
12"
A
PIER SECTION

Figure 3: Retaining Wall

Figure 4: Beginning of Retaining Wall (Point A) Looking East along Diablo Circle

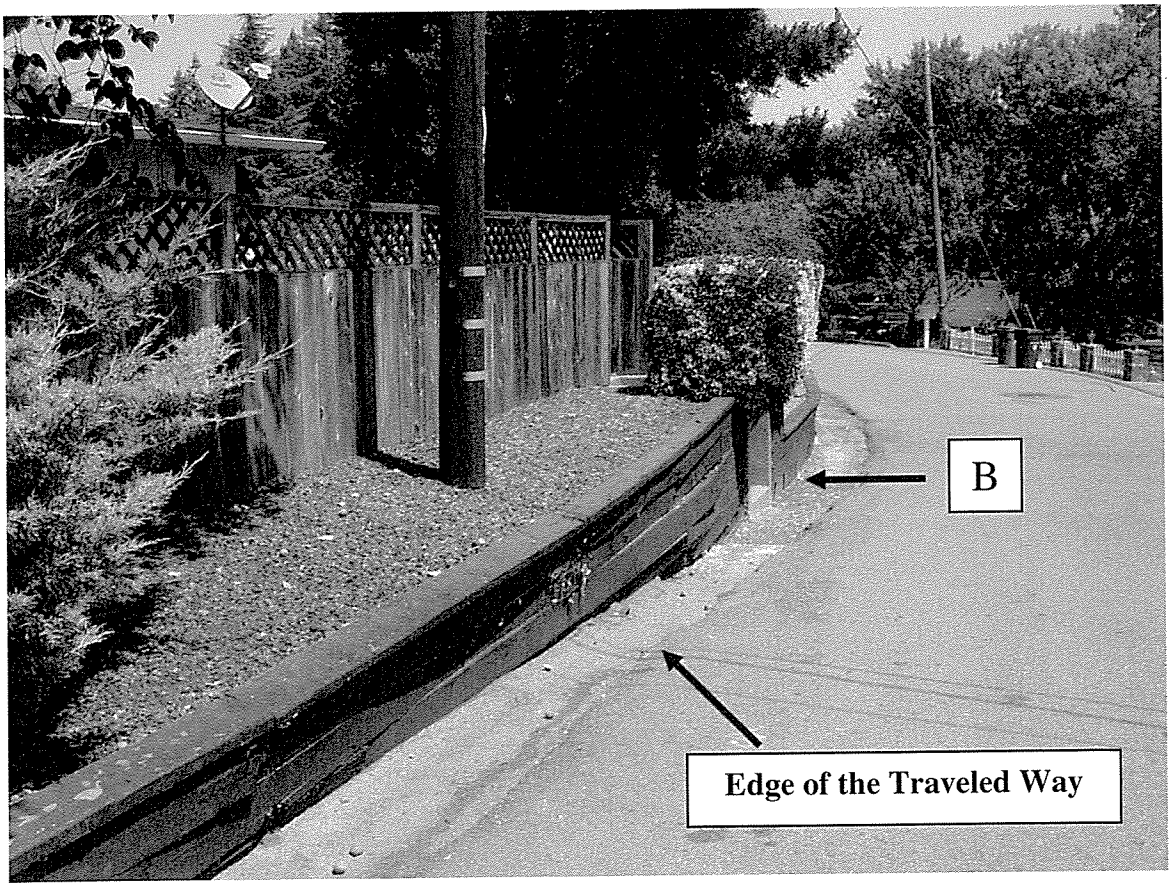

Figure 5: Existing Wall, Utility Pole, and Concrete Stairway (Point B) Looking East

Figure 6: Failing Section of Retaining Wall

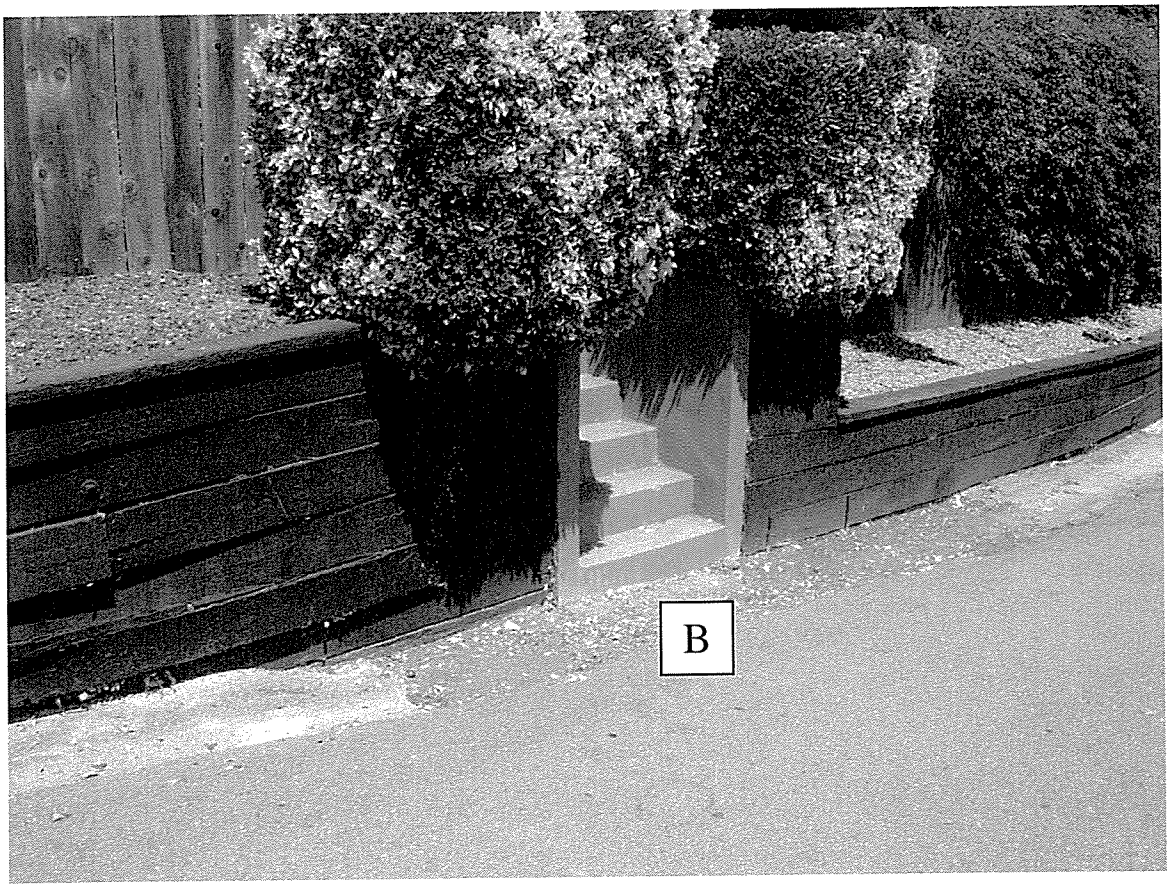

Figure 7: Concrete Stairway (Point B)

Figure 8: Retaining Wall along Curve of Diablo Circle (Between B and C)

Figure 9: End of Retaining Wall (Point C)

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of a retaining wall within the Public Right-of-Way along Diablo Circle at 16 Hidden Valley Road.

This Agreement is entered into on September 14, 2009 between Mark D. Kittinger and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 16 Hidden Valley Road Lafayette, California, APN 251-092-001 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to construct a retaining wall which will encroach into the public right-of-way along Diablo Circle at 16 Hidden Valley Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and the placement of a retaining wall.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of a retaining wall

Property Owner is permitted to place a retaining wall which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Diablo Circle at 16 Hidden Valley Road, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the retaining wall within the right-of-way as installed

and maintained by the Property Owner. Property Owner also assumes the risk of damage to the retaining wall installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the retaining wall, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking " of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking " including reasonable attorney's fees costs, alleged to have resulted from the location of the retaining wall within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the retaining wall. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the retaining wall described in Paragraph 1. Property Owner shall maintain the retaining wall in a safe and attractive condition as an encroachment within the City's right-of-way area. The retaining wall may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the retaining wall the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the retaining wall, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the retaining wall, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the retaining wall which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A-1" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the retaining wall. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the retaining wall described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Mark D. Kittinger
16 Hidden Valley Road
Lafayette, CA 94549

When the Property Owner(s) cease to be the owner(s) they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the retaining wall.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches to Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Steven B. Falk, City Manager

PROPERTY OWNER(S)

_____
Mark D. Kittinger

_____
* Notarial Acknowledgment Required.

ATTEST:

_____
Joanne Robbins, City Clerk

RECORDING REQUESTED BY

Placer Title Company

Escrow Number: 601-21228

AND WHEN RECORDED MAIL TO

MARK D. KITTINGER AND JODI D. KITTINGER
16 HIDDEN VALLEY ROAD
LAFAYETTE, CA 94549

Placer Title

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2006-0266840-00
Acct 12- Placer Title
Wednesday, AUG 23, 2006 08:00:00
LAF$1,736.90 MIC $1.00 Mor $2.00
REC $6.00 TCF $1.00
Ttl Pd $1,746.90 Nbr-0003374480
MNH/R2/1-2

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s):
Documentary transfer tax is $1,736.90 City Transfer Tax: $0.00
(X) computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **VICTOR DRABKIN AND ANASTACIA DRABKIN, TRUSTEES OF THE DRABKIN FAMILY REVOCABLE TRUST AGREEMENT DATED AUGUST 16, 1996**

Hereby GRANT(S) to **MARK D. KITTINGER AND JODI D. KITTINGER , HUSBAND AND WIFE, AS COMMUNITY PROPERTY, WITH THE RIGHT OF SURVIVORSHIP**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

LOT 78, MAP OF HIDDEN VALLEY ESTATES, UNIT NO. 2, FILED MARCH 12, 1940, MAP BOOK 24, PAGE 750, CONTRA COSTA COUNTY RECORDS.

A.P.N. 251-092-001

Dated: August 10, 2006

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE, IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

SAME AS ABOVE

Name | Street Address | City & State

O:\SlrPkg.doc (4/2002)

EXHIBIT A: LEGAL DESCRIPTION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On 9-8-09 (Date) before me, Joanne Lee Robbins, notary, (Here Insert Name and Title of the Officer)

personally appeared Mark D. Kittinger (Name(s) of Signer(s))

_____,

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

ESI1 JOANNE LEE ROBBINS COMM. #1834010 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. FEB 10, 2013 ESI1

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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